

SEP 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN DAVID MUNOZ-CRUZ,

Defendant-Appellant.

No. 06-30267

D.C. No. CR-04-00064-MFM

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Submitted September 11, 2006 **

Before: PREGERSON, T. NELSON, and GRABER, Circuit Judges.

Juan David Munoz-Cruz appeals his 57-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry, in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Munoz-Cruz contends that the district court violated his constitutional rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed by *United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006). Moreover, in the plea agreement and at the plea colloquy, Munoz-Cruz admitted that he had been deported on July 25, 2000, which was subsequent to his August 16, 1994 drug conviction.

AFFIRMED.